

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

**MARGARET L. WENDT FOUNDATION
HOLDINGS, INC.,**

Plaintiff,

-vs-

THE ROYCROFT TEA CO., INC.,

Defendant.

COMPLAINT

Civil Action No. _____

JURY TRIAL DEMANDED

Plaintiff Margaret L. Wendt Foundation Holdings, Inc. ("Wendt Holdings"), by its attorneys, Hiscock & Barclay, LLP, as and for its Complaint against Defendant The Roycroft Tea Co., Inc. ("Defendant"), alleges as follows:

NATURE OF THE ACTION

1. This is an action for false designation of origin and unfair competition under the Lanham Act (15 U.S.C. § 1051, et seq.), and trademark infringement, trademark dilution, unfair competition, and related causes of action under the laws of the State of New York arising from the intentional, wrongful, and improper use by Defendant of the "ROYCROFT" trademark, service mark, and trade name (the "Roycroft Mark").

2. Wendt Holdings seeks injunctive relief and damages pursuant to Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)), Section 360 of the New York General Business Law, and the common law of the State of New York.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Section 39 of the Lanham Act (15 U.S.C. § 1121), and 28 U.S.C. §§ 1331, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

4. Venue is properly founded in this judicial district pursuant to 28 U.S.C. 1391(b) and (c), because Defendant is subject to personal jurisdiction within this judicial district and because a substantial part of the events giving rise to these claims occurred within this judicial district.

PARTIES

5. Wendt Holdings is a not-for-profit corporation organized and existing under the laws of the State of New York, having its principal place of business at 40 Fountain Plaza, Suite 277, Buffalo, New York 14202.

6. Wendt Holdings is a wholly-owned subsidiary of The Margaret L. Wendt Foundation ("Wendt Foundation"), a charitable trust organized and existing under the laws of the State of New York that is an exempt entity under Section 501(c)(3) of the Internal Revenue Code. The Wendt Foundation was established on February 20, 1956 to promote and assist religious, charitable, educational, and scientific causes primarily in the Western New York area.

7. Upon information and belief, Defendant is a corporation organized and existing under the laws of the State of New York, having its registered business address at 243 South Grove Street, East Aurora, New York 14052.

FACTUAL ALLEGATIONS

The Wendt Parties and the Roycroft Inn

8. In 1987, the Wendt Foundation resolved to rescue the Roycroft Inn and restaurant (together, the “Roycroft Inn”) and the remaining vestiges of the Roycroft movement.

9. After it was established on May 4, 1995 for the purpose of preserving all things “Roycroft,” Wendt Holdings acquired all of the interest in and to the Roycroft Inn and is now the successor in interest of the prior owners of the Roycroft Inn and all rights to the Roycroft Mark.

10. The Roycroft Inn first opened for business in 1905 and throughout its time became known worldwide as the home of the Roycroft Movement. A brief summary of that history as published by the Roycroft Inn is attached hereto as Exhibit A.

11. Ultimately, in excess of \$8,000,000 was spent to restore, refurbish, and renovate the Roycroft Inn.

12. On June 9, 1995, Wendt Holdings acquired title to the Roycroft Inn and to all of the goodwill associated with the Roycroft Inn and the Roycroft Mark.

13. Wendt Holdings re-opened the Roycroft Inn to the public on June 10, 1995, and has continued the open and notorious operation of the Roycroft Inn and use in commerce of the Roycroft Mark since that time.

14. Grove Street Holdings, Inc. (“Grove Street”), a New York corporation and a “related company” of Wendt Holdings as defined by Section 45 of the Lanham Act (15 U.S.C. § 1127), operates the Roycroft Inn and uses the Roycroft Mark by license from Wendt Holdings.

15. As a result, Wendt Holdings, through the restoration and operation of the Roycroft Inn by Grove Street, uses the Roycroft Mark in commerce on and in association with restaurant services, lodging services, food products, and accessories including, among many

other products, tableware and china. Summaries of those products and services as published by the Roycroft Inn are attached hereto as Exhibit B.

16. The use in commerce by the Roycroft Inn of the Roycroft Mark to the present day, in connection with the provision of its restaurant and lodging services and the sale of merchandise inures solely to the benefit of Wendt Holdings and clearly entitles Wendt Holdings to the exclusive use of the Roycroft Mark for these purposes, among many others.

The Turgeon Litigation

17. In 2001, Wendt Holdings commenced an action in the United States District Court for the Western District of New York (Civil Action No. 01-cv-0074) (the “Turgeon Litigation”) against Roycroft Associates, the Roycroft Shops, Inc., Edith S. “Kitty” Turgeon and Robert Rust (the “Turgeon Parties”).

18. A primary purpose of the Turgeon Litigation was to quiet title in and to the Roycroft Mark, given that Wendt Holdings, as the owner and operator (through Grove Street) of the Roycroft Inn, was the natural successor to ownership and use of the Roycroft Mark.


19. On December 1, 2009, Wendt Holdings and the Turgeon Parties entered into a Settlement Agreement through which Wendt Holdings achieved its objective of quieting title to and confirming its ownership of the Roycroft Mark.

20. Pursuant to the terms of the Settlement Agreement, the Turgeon Parties assigned to Wendt Holdings all rights and interest, including all goodwill associated with the Roycroft Mark, in and to the Roycroft Mark and to trademark applications and registrations as had been filed and obtained by the Turgeon Parties.

21. As a result of the Settlement Agreement, Wendt Holdings is now the undisputed sole and exclusive owner of the Roycroft Mark.

The Roycroft Trademark Applications and Registrations

22. Wendt Holdings now is the owner of the following trademark applications for the Roycroft Mark, filed with the United States Patent and Trademark Office (“USPTO”), the first two of which applications had been allowed and published by the USPTO, their delay in registration caused only by oppositions by Wendt Holdings now declared moot by the USPTO by virtue of the ownership thereof by Wendt Holdings:

Mark	Serial No.	Filing Date	First Use	Wares/Services	Class
	74409628	07/06/1993	02/1992	Wood furniture preservative polishes	003
ROYCROFT	75284368	04/30/1997	05/1981	Furniture	020
ROYCROFT	85050553	05/28/2010	1905	Restaurant services; Temporary accommodations	043
ROYCROFT	85050572	05/28/2010	1905	Retail gift shops; On-line retail gift shops	035

Copies of the descriptions of the USPTO applications as published by the USPTO are attached hereto as Exhibit C.

23. In addition, Wendt Holdings now is the owner of all rights with respect to the following trademark registrations in New York State:

Mark	Reg. No.	Reg. Date	First Use	Wares/Services	Class(es)
“ROYCROFT” and design	R28868	03/30/1998	1982	Packaged foods, including	29, 30

of an inverted "T" entering the top quarter of a circle with two crossed arms spaced equally down the stem of the "T", above the circle. A capital "R" is centered within the lower three quarters of the circle.				spice mixes, syrups, dressings, dip mixes, baked goods, jams & jellies, honey, candies, soups	
An inverted "T" entering the top quarter of a circle with two cross arms spaced equally down the stem of the "T" above the circle. A capital "R" is centered within the lower three quarters of the circle.	R28869	03/30/1998	1982	Tableware, dinnerware and serving items for food containers, and garden items (terra cotta)	21
An inverted "T" entering the top quarter of a circle with two cross arms spaced equally down the stem of the "T" above the circle. A capital "R" is centered within the lower three quarters of the circle.	R28867	03/30/1998	1976	Prints; new and reprints; posters; books, cookbooks, brochures, postcards; stationery, greeting cards, giftware, cocktail napkins, paperplate, ribbon, wall paper, border paper	16
An inverted "T" entering the top quarter of a circle with two cross arms spaced equally down the stem of the "T" above the circle. A capital "R" is centered within the lower three quarters of the circle.	R28866	03/30/1998	1976	Furniture, including chairs, tables, lamps (wooden and stained glass), frames, beds, bedroom, living room, and dining furniture, medical cabinets, stands, floor lamps, waste baskets, benches, bookcases	20
The name "ROYCROFT" and/or the design of an inverted "T" entering the top quarter of a circle with two crossed arms spaced equally down the stem of the "T", above the circle. A capital "R" is centered within the lower three-quarters of the circle.	R26393	12/28/1990	1977	Clothing, including aprons, hats, tee-shirts, men's and women's clothing, children's clothing, and as a logo on any other clothing or personal apparel	25

ROYCROFT	R25572	06/06/1989	1989	Jewelry and precious metalware	14
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Copies of the descriptions of the New York State Certificates of Trademark Assignment Registration are attached hereto as Exhibit D.

Defendant's Acts of Infringement and Unfair Competition

24. Upon information and belief, Defendant is engaged in the process of marketing, opening, and preparing to operate in commerce an establishment named "Roycroft Tea Co." (the "Tea Company") in the Village of East Aurora, New York, in order to sell food-related and other products.

25. On January 27, 2010, and as evidence of its declared intent as to the *bona fide* use in commerce, Defendant filed a federal trademark application (Serial No. 77921410) for "Roycroft Tea Co. From Farm to Family" and a related design for mail-order services, retail store, and online retail store services featuring, *inter alia*, tea and tea beverages. A copy of the description of Defendant's application as published by the USPTO is attached hereto as Exhibit E.

26. Upon information and belief, Defendant presently maintains a website associated with the Tea Company with at least the following domain names: (1) roycrofttea.com; and (2) roycrofttea.net.

27. Moreover, Defendant has elected to establish its business location at 421 Main Street in the Village of East Aurora, New York, less than 800 feet away from the Roycroft Inn.

28. In addition, Defendant applied for and, on or about April 19, 2010, was granted a Special Permit pursuant to Village Code Section 285-51 by the East Aurora Village Board in connection with the Tea Company establishment.

29. Wendt Holdings has not authorized Defendant to use the Roycroft Mark for any purpose, whether with respect to the proposed establishment, its corporate name, the associated website, or otherwise.

30. On April 15, 2010, attorneys for Wendt Holdings sent a letter to Defendant demanding that Defendant immediately cease and desist from any further use of the Roycroft Mark in any form in future business dealings due to the misleading nature of the representations of a purported relationship between Wendt Holdings and/or the Roycroft Inn on the one hand, and the Defendant and/or the Tea Company on the other. A copy of the April 15th letter is attached hereto as Exhibit F.

31. In response to Wendt Holdings' demands, by letter dated April 16, 2010 from Defendant's counsel, Defendant refused to comply with Wendt Holdings' demands. A copy of the April 16th letter is attached hereto as Exhibit G.

32. Upon information and belief, a principal of Defendant avowed the continuing intent of Defendant to operate its business under the Roycroft Mark, and to use, design, sell, manufacture, advertise, promote, and/or offer for sale products under the Roycroft Mark, unless otherwise restrained. A copy of this statement is attached hereto as Exhibit H.

33. Defendant is well aware of the fame and strength of the Roycroft Mark, and the goodwill symbolized thereby, and that the Roycroft Mark cannot be used by Defendant as an indicator of source or sponsorship for the business it is operating or for the products it is advertising, selling, and/or distributing. As a result, Defendant has been engaging and intends to continue engaging in unlawful activities knowingly and intentionally, and with reckless disregard for Wendt Holdings' rights in the Roycroft Mark.

34. Defendant's current promotion of its business and products bearing the Roycroft Mark is part of a deliberate scheme to target Wendt Holdings and/or the Roycroft Inn to trade upon the goodwill and reputation associated both with the Roycroft Inn and its high-quality services, and with the Roycroft Mark and its legacy.

35. Upon information and belief, Defendant's persistent use of the Roycroft Mark is a clear attempt to misappropriate the skills, expenditures, and labor of Wendt Holdings, and to profit from the commercial advantage that has been established with respect to the Roycroft Mark.

36. Upon further information and belief, Defendant intends to continue its effort to use the Roycroft Mark in connection with its business and products, and will continue to misappropriate the goodwill associated with the Roycroft Mark unless otherwise restrained, all of which are likely to confuse, mislead, or deceive others as to the origin, source, sponsorship, or affiliation of Defendant's business and products, and to cause such others to believe in error that Defendant's business and products have been authorized or sponsored by Wendt Holdings and/or the Roycroft Inn.

FIRST CLAIM FOR RELIEF
(False Designation of Origin – 15 U.S.C. § 1125(a))

37. Wendt Holdings repeats and realleges all of the allegations set forth above as if more fully set forth herein.

38. The foregoing acts of Defendant are intended and are likely to confuse, mislead, or deceive consumers, the public, and the trade as to the origin, source, sponsorship, or affiliation of Defendant's business and products, and are intended and are likely to cause such parties to believe in error that Defendant's business and products have been authorized, sponsored,

approved, endorsed, or licensed by Wendt Holdings, or that Defendant is in some way affiliated with Wendt Holdings and/or the Roycroft Inn.

39. Defendant's acts constitute a false designation of origin, and false and misleading descriptions and representations of fact, all in violation of the Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

40. Upon information and belief, by its acts, Defendant has made and/or will make substantial profits and gains to which it is not, in law or equity, entitled.

41. Upon information and belief, Defendant intends to continue its willfully infringing acts unless restrained by this Court.

42. Defendant's acts have damaged and will continue to damage Wendt Holdings, and Wendt Holdings has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Common Law Trademark Infringement)

43. Wendt Holdings repeats and realleges all of the allegations set forth above as if more fully set forth herein.

44. Wendt Holdings owns all rights, title, and interest in and to the Roycroft Mark as set forth above, including all common law rights in such Mark.

45. The Roycroft Inn's long, substantial, extensive and widespread use in commerce of the Roycroft Mark in its business has caused the Mark to have a secondary, distinctive, and unique trademark meaning to consumers, the public, and the trade.

46. Upon information and belief, Defendant has acted with knowledge of Wendt Holdings' ownership of the Roycroft Mark and with the deliberate intention to unfairly benefit from and trade upon the incalculable goodwill and reputation symbolized thereby.

47. The foregoing acts of Defendant are intended and are likely to confuse, mislead, or deceive consumers, the public, and the trade as to the origin, source, sponsorship, or affiliation of Defendant's business and products, and are intended and are likely to cause such parties to believe in error that Defendant's business and products have been authorized, sponsored, approved, endorsed, or licensed by Wendt Holdings, or that Defendant is in some way affiliated with Wendt Holdings and/or the Roycroft Inn.

48. The foregoing acts of Defendant constitute trademark infringement in violation of the common law of the State of New York.

49. Upon information and belief, by its acts, Defendant has made and/or will make substantial profits and gains to which it is not, in law or equity, entitled.

50. Upon information and belief, Defendant intends to continue its willfully infringing acts unless restrained by this Court.

51. Defendant's acts have damaged and will continue to damage Wendt Holdings, and Wendt Holdings has no adequate remedy at law.

THIRD CLAIM FOR RELIEF
(Trademark Infringement – N.Y. G.B.L. § 360-K)

52. Wendt Holdings repeats and realleges all of the allegations set forth above as if more fully set forth herein.

53. Wendt Holdings is the registered owner of the Roycroft Mark in the State of New York.

54. The foregoing acts of Defendant are intended to cause, have caused, are likely to continue to cause confusion, mistake and deception among the general consuming public and the trade as to whether they originate from, or are affiliated with, sponsored by, or endorsed by Wendt Holdings.

55. Upon information and belief, Defendant has acted with knowledge of Wendt Holdings' ownership of the Roycroft Mark and with the deliberate intention to unfairly benefit from the incalculable goodwill symbolized thereby.

56. Defendant's acts constitute trademark infringement in violation of Section 360-k of the New York General Business Law.

57. Upon information and belief, by its acts, Defendant has made and/or will make substantial profits and gains to which it is not, in law or equity, entitled.

58. Upon information and belief, Defendant intends to continue its willfully infringing acts unless restrained by this Court.

59. Defendant's acts have damaged and will continue to damage Wendt Holdings, and Wendt Holdings has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF
(Common Law Unfair Competition)

60. Wendt Holdings repeats and realleges all of the allegations set forth above as if more fully set forth herein.

61. The foregoing acts of Defendant constitute unfair competition in violation of the common law of the State of New York.

62. Upon information and belief, by its acts, Defendant has made and/or will make substantial profits and gains to which it is not, in law or equity, entitled.

63. Upon information and belief, Defendant intends to continue its willfully infringing acts unless restrained by this Court.

64. Defendant's acts have damaged and will continue to damage Wendt Holdings, and Wendt Holdings has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
(Deceptive Acts and Practices - N.Y. G.B.L. § 349)

65. Wendt Holdings repeats and realleges all of the allegations set forth above as if more fully set forth herein.

66. The foregoing acts of Defendant constitute consumer-oriented conduct that has affected the public interest of New York and has resulted and/or may result in injury to consumers in New York and/or harm to the public.

67. By the acts described herein, Defendant has willfully engaged in deceptive acts or practices in the conduct of its business in violation of New York General Business Law § 349.

68. Upon information and belief, Defendant has made and/or will make substantial profits and gains to which it is not, in law or equity, entitled.

69. Upon information and belief, Defendant intends to continue its willfully infringing acts unless restrained by this Court.

70. Defendant's acts have damaged and will continue to damage Wendt Holdings, and Wendt Holdings has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF
(Trademark Dilution - N.Y. G.B.L. § 360-L)

71. Wendt Holdings repeats and realleges all of the allegations set forth above as if more fully set forth herein.

72. Wendt Holdings is the exclusive owner with respect to the Roycroft Mark throughout the United States, including the State of New York.

73. Through prominent, long and continuous use in commerce, including commerce within the State of New York, the Roycroft Mark has become and continues to become famous and distinctive.

74. By the acts described herein, Defendant has diluted the distinctiveness of the Roycroft Mark and has caused a likelihood of harm to Wendt Holdings' business reputation in violation of New York General Business Law § 360-1.

75. Upon information and belief, by its acts and intended acts, Defendant has made and/or will make substantial profits and gain to which it is not, in law or equity, entitled.

76. Upon information and belief, Defendant intends to continue its willfully infringing acts unless restrained by this Court.

77. Defendant's acts have damaged and will continue to damage Wendt Holdings, and Wendt Holdings has no adequate remedy at law.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Wendt Holdings hereby demands a trial by jury on all issues so triable.

WHEREFORE, Wendt Holdings respectfully demands judgment against Defendant as follows:

- (a) Finding that (i) Defendant has violated Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) and Section 360-k of the New York General Business Law; (ii) Defendant has engaged in trademark infringement and unfair competition under the common law of the State of New York; (iii) Defendant has diluted the Roycroft Mark in violation of New York General Business Law § 360-1; and (iv) Defendant has been unjustly enriched in violation of New York common law.
- (b) Granting an injunction permanently restraining and enjoining Defendant, its officers, agents, employees, and attorneys, and all those persons or entities in active concert and participation with them, or any of them, from:
 - i. manufacturing, importing, advertising, marketing, promoting, supplying, distributing, offering for sale or selling any products, or operating any business concerns,

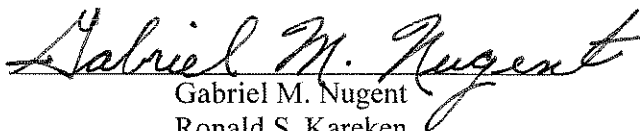
which bear the Roycroft Mark or any other mark substantially or confusingly similar thereto, and engaging in any other activity constituting an infringement of any of Wendt Holdings' rights in the Roycroft Mark or any other trademark owned by Wendt Holdings; and

- ii. engaging in any other activity constituting unfair competition with Wendt Holdings, or acts or practices that deceive the public and/or the trade; and
 - iii. engaging in any activity that will cause the distinctiveness of the Roycroft Mark to be diluted.
- (c) Directing such other relief as the Court may deem appropriate to prevent the public from deriving any erroneous impression that any product or business concern associated with Defendant and at issue in this litigation has been authorized by Wendt Holdings, or is related to or associated in any way with Wendt Holdings, the Roycroft Inn, or their products.
 - (d) Directing the United States Patent and Trademark Office to cancel any and all of Defendant's trademark applications and/or registrations containing the mark "Roycroft" or any confusingly similar mark.
 - (e) Directing that Defendant account to and pay over to Wendt Holdings all profits realized by its wrongful acts in accordance with Section 35 of the Lanham Act (15 U.S.C. § 1117) and Section 360-m of the New York General Business Law.
 - (f) At its election, awarding Wendt Holdings statutory damages in accordance with Section 35 of the Lanham Act (15 U.S.C. § 1117).
 - (g) Awarding Wendt Holdings actual damages in accordance with Section 35 of the Lanham Act (15 U.S.C. § 1117) and Section 360-m of the New York General Business Law.
 - (h) Awarding Wendt Holdings its costs and attorneys' fees, and investigatory fees and expenses, to the full extent provided for by Section 35 of the Lanham Act (15 U.S.C. § 1117) and Section 360-m of the New York General Business Law.
 - (i) Requiring Defendant to deliver to Wendt Holdings for destruction or other disposition all remaining inventory and products bearing the Roycroft Mark, including all advertising, promotional and marketing materials therefor, as well as all means of making same.

- (j) Transferring the domain names "roycrofttea.com" and "roycrofttea.net" to Wendt Holdings, the owner of the Roycroft trademark.
- (k) Awarding Wendt Holdings pre-judgment interest on any monetary award made part of the judgment against Defendant.
- (l) Awarding Wendt Holdings such additional and further relief as the Court deems just and proper.

DATED: June 3, 2010

HISCOCK & BARCLAY, LLP

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EXHIBIT A



The ROYCROFT Inn

40 SOUTH GROVE STREET
EAST AURORA, NEW YORK 14052
T 716-652-5552 F 716-655-5345

[INN](#) [RESTAURANT](#) [UPCOMING EVENTS](#) [GIFT SHOP](#)

[TOP](#)

[HISTORY](#)

[LOCATION](#)

[SUITES](#)

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[NEWSLETTER](#)

History of the Inn:

In 1895 the Roycroft Arts and Crafts Community was founded in East Aurora, New York by writer-philosopher Elbert Hubbard. Based on the Medieval Guild system that was adapted by William Morris & John Ruskin in the English Arts & Crafts Movement, Hubbard developed and promoted a self-contained community which supported hundreds of craftspeople.

Well-known names such as Frank Lloyd Wright, Gustav Stickley and Dard Hunter, were highly influential to the Roycrofters and the Arts and Crafts Movement in America. The Roycroft community became the mecca for those interested in the Arts and Crafts movement and in 1905 the Roycroft Inn was opened to accommodate the thousands of people who journeyed there. After Hubbard's tragic death in 1915, the Roycroft was operated until 1938 by his son Bert.



THE RECEPTION ROOM

Passing through several hands since then, it was granted National Landmark Status in 1986, and thanks to the support of the Margaret L. Wendt Foundation the Roycroft Inn re-opened in June 1995. An exquisite collection of original and reproduction furniture and fixtures adorn the meticulously refurbished Inn. The floor plan and style is in keeping with the Inn's original "fabric" and the rooms still bear the names of notable personalities, carved in their doors, such as Ralph Waldo Emerson, Charlotte Bronte, Henry David Thoreau, and Susan B. Anthony. Blending the rich historical significance of the Roycroft Movement with completely modern amenities, the Inn provides the utmost in style, comfort and luxury. From the unique guest suites, to grand dining and function rooms, exceptional quality, service and hospitality in the Roycroft Tradition abound.

[Inn](#) [Restaurant](#) [Upcoming Events](#) [Gift Shop](#)

EXHIBIT B



The ROYCROFT Inn

40 SOUTH GROVE STREET
EAST AURORA, NEW YORK 14052
T 716 652 5552 F 716 655 9345

[INN](#) [RESTAURANT](#) [UPCOMING EVENTS](#) [GIFT SHOP](#)

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[SUITES](#)

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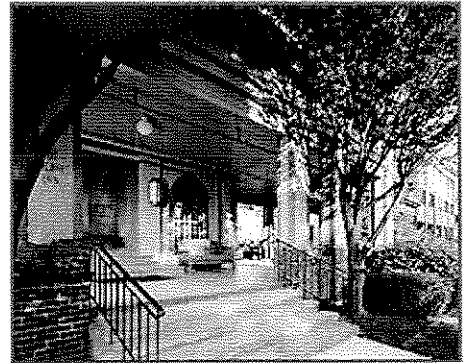
The Inn:

A total of 28 guest suites are available at The Roycroft Inn. Each suite consists of at least one sleeping area, a changing / sitting area and a full bath. Guests may choose from three, four, or five room suites.

Because of our National Landmark status, it was imperative that our guest rooms conform to the existing structure. Therefore, the beauty and history of this building can be seen in each and every guest suite. All are exquisitely decorated with original and / or reproduction Roycroft furnishings.

As the comfort of our guests is our focus, all rooms have been "modernized" to include telephones, computer fax modems and remote control color televisions, with videocassette players.

Whether you are a weary business traveler, a couple of parents "escaping" for the weekend, or an entire family in town for a family reunion. The Roycroft Inn and staff will make sure you feel right at home!



THE ROYCROFT INN

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The ROYCROFT Inn

40 SOUTH GROVE STREET
EAST AURORA, NEW YORK 14052
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Restaurant:

The Roycroft Inn restaurant is open year round for lunch, dinner, and Sunday brunch. Enjoy a leisurely cocktail in the Lounge before moving to one of several areas for lunch or dinner. The Larkin Room is particularly inviting, as it overlooks our courtyard garden. The Peristyle is also available for outdoor dining during the warmer months. In addition to our established menu, our chef has created a "Signature Dinner Menu" which changes on a seasonal basis.

Our Executive Chef and kitchen staff can accomodate your unique dietary needs, such as gluten free, lactose intolerant, vegan, allergies, and other special requests. Please call for information.

Reservations are recommended. Please call 716-652-5552 or reserve online below.



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The ROYCROFT Inn

40 SOUTH GROVE STREET
EAST AURORA, NEW YORK 14052
T 716 652-5552 : F 716 655 5345

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TOP

APPAREL

BOOKS

CHINA

GIFTS

ORNAMENTS

HOME DECOR

JEWELRY

TABLEWARE

MISCELLANEOUS

CLOCK

LOCATION

CONTACT US

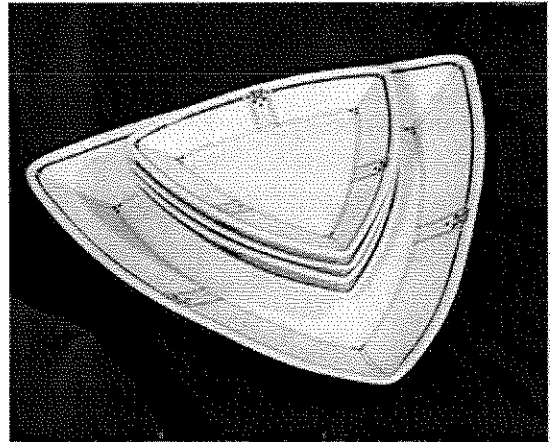
NEWSLETTER

Gift Shop

Welcome to the ROYCROFT Inn gift shop. Here you will find items of interest to history lovers or Arts & Crafts collectors as well as high-quality mementos of your visit to the Inn.

**New in the Roycroft Anniversary
China collection: Pyramid Plates.**
[Details here!](#)

Give the Roycroft Inn Gift Certificate!
[Order here.](#)



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EXHIBIT C



United States Patent and Trademark Office

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Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri May 21 04:03:36 EDT 2010

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[Logout](#) Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TARR Status](#) | [ASSIGN Status](#) | [TDR](#) | [TTAB Status](#)


ROYCROFT

Word Mark ROYCROFT R
Goods and Services IC 003. US 004. G & S: wood furniture preservative polishes. FIRST USE: 19920217. FIRST USE IN COMMERCE: 19920217
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 24.13.25 - Cross, ankh; Cross, Maltese; Other crosses, including ankh, Maltese
 26.01.02 - Circles, plain single line; Plain single line circles
 26.01.04 - Circles with two breaks or divided in the middle
Serial Number 74409628
Filing Date July 6, 1993
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition October 11, 1994
Owner (APPLICANT) Margaret L. Wendt Foundation Holdings, Inc. CORPORATION NEW YORK 40 Fountain Plaza Buffalo NEW YORK 14202
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record RONALD S. KAREKEN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark	ROYCROFT
Goods and Services	IC 020. US 002 013 022 025 032 050. G & S: furniture. FIRST USE: 19810531. FIRST USE IN COMMERCE: 19881130
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75284368
Filing Date	April 30, 1997
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	July 28, 1998
Owner	(APPLICANT) Margaret L. Wendt Foundation Holdings, Inc. CORPORATION NEW YORK 40 Fountain Plaza Buffalo NEW YORK 14604
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	RONALD S. KAREKEN
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Live/Dead Indicator	LIVE

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ROYCROFT

Word Mark	ROYCROFT
Goods and Services	IC 043. US 100 101. G & S: Restaurant services; temporary accommodations. FIRST USE: 19050000. FIRST USE IN COMMERCE: 19050000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85050553
Filing Date	May 28, 2010
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Margaret L. Wendt Foundation Holdings, Inc. CORPORATION NEW YORK 40 Fountain Plaza Buffalo NEW YORK 14202
Attorney of Record	Ronald S. Kareken
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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ROYCROFT

Word Mark	ROYCROFT
Goods and Services	IC 035. US 100 101 102. G & S: Retail gift shops featuring apparel, books, china, ornaments, home decor, jewelry, tableware, clocks, artwork, music CD's, and souvenirs; on-line retail gift shops featuring apparel, books, china, ornaments, home decor, jewelry; tableware, clocks, artwork, music CD's, and souvenirs. FIRST USE: 19050000. FIRST USE IN COMMERCE: 19050000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85050572
Filing Date	May 28, 2010
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Margaret L. Wendt Foundation Holdings, Inc. CORPORATION NEW YORK 40 Fountain Plaza Buffalo NEW YORK 14202
Attorney of Record	Ronald S. Kareken
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT D

New York State Department of State Certificate of Trademark Assignment Registration

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Original Registration No.: R28868 *Original Registration Date:* 03/30/98

Applicant's Name: MARGARET L. WENDT FOUNDATION HOLDINGS, INC.
40 FOUNTAIN PLAZA, SUITE 277
BUFFALO NY 14202-

*State of Incorporation
or Organization:* NEW YORK

Classification Numbers: 29, 30

Date First Used in NYS 1982 *Date First Used Anywhere:* 1982

Trademark Description:

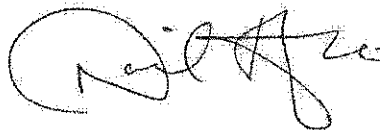
Roycroft and design of an inverted "T" entering the top quarter of a circle with two crossed arms spaced equally down the stem of the "T", above the circle. A capital "R" is centered within the lower three quarters of the circle.

Description of Goods: *Used in connection with packaged foods, including spice mixes, syrups, dressings, dip mixes, baked goods, jams & jellies, honey, candies, soups.*

WITNESS my hand and the seal of the State of New York In the City of Albany on this:

Thursday, April 01, 2010

by:



Special Deputy Secretary of State

R31643

New York State Department of State

Certificate of Trademark Assignment Registration

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Original Registration No.: R28869 *Original Registration Date:* 03/30/98

Applicant's Name: MARGARET L. WENDT FOUNDATION HOLDINGS, INC.
40 FOUNTAIN PLAZA, SUITE 277
BUFFALO NY 14202-

*State of Incorporation
or Organization:* DENVER

Classification Numbers: 21

Date First Used in NYS: 1982 *Date First Used Anywhere:* 1982

Trademark Description:

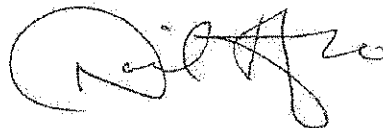
The mark consists of an inverted "T" entering the top quarter of a circle with two cross arms spaced equally down the stem of the "T" above the circle. A capital "R" is centered within the lower three quarters of the circle.

Description of Goods: Tableware, dinnerware and serving items for food containers also garden items,
(terracota)

WITNESS my hand and the seal of the State of New York In the City of Albany on this:

Thursday, April 01, 2010

by:



R31642

Special Deputy Secretary of State

New York State Department of State *Certificate of Trademark Assignment Registration*

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Original Registration No.: R28867 *Original Registration Date:* 03/30/98

Applicant's Name: MARGARET L. WENDT FOUNDATION HOLDINGS, INC.
40 FOUNTAIN PLAZA, SUITE 277
BUFFALO NY 14202-

*State of Incorporation
or Organization:*

Classification Numbers: 16

Date First Used in NYS 1976 *Date First Used Anywhere:* 1976

Trademark Description:

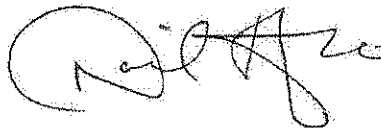
The mark consists of an inverted "T" entering the top quarter of a circle with two cross arms spaced equally down the stem of the "T" above the circle. A capital "R" is centered within the lower three quarters of the circle.

Description of Goods: Prints; new and reprints; posters; books, cookbooks, brochures, postcards; stationery; greeting cards, giftware, cocktail napkins, paperplate, ribbon, wall paper, border paper.

WITNESS my hand and the seal of the State of New York In the City of Albany on this:

Wednesday, March 31, 2010

by:



R31641

Special Deputy Secretary of State

New York State Department of State Certificate of Trademark Assignment Registration

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Original Registration No.: R28866 *Original Registration Date:* 03/30/98

Applicant's Name: MARGARET L. WENDT FOUNDATION HOLDINGS, INC.
40 FOUNTAIN PLAZA, SUITE 277
BUFFALO, NY 14202-

*State of Incorporation
or Organization:* NEW YORK

Classification Numbers: 20

Date First Used in NYS 1976 *Date First Used Anywhere:* 1983

Trademark Description:

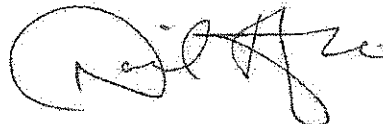
The mark: an inverted T entering the top quarter of a circle with two cross arms spaced equally down the stem of the "T" above the circle. A capital "R" is centered within the lower three quarters of the circle.

Description of Goods: Furniture including chairs tables lamps (wooden & stained glass) frames, beds
bedroom, living room, dining furniture, medical cabinets, stands, floor lamps, waste
baskets, benches etc. bookcases.

WITNESS my hand and the seal of the State of New York In the City of Albany on this:

Wednesday, March 31, 2010

by:



R31640

Special Deputy Secretary of State

New York State Department of State *Certificate of Trademark Assignment Registration*

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Original Registration No.: R26393 *Original Registration Date:* 12/28/90

Applicant's Name: MARGARET L. WENDT FOUNDATION HOLDINGS, INC.
40 FOUNTAIN PLAZA, SUITE 277
BUFFALO NY 14202-

*State of Incorporation
or Organization:* NEW YORK

Classification Numbers: 25

Date First Used in NYS 1977 *Date First Used Anywhere:* 1979

Trademark Description:

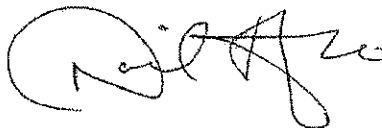
The name "ROYCROFT" and or the design of an inverted "T" entering the top quarter of a circle with two crossed arms spaced equally down the stem of the "T", above the circle. A capital "R" is centered within the lower three-quarters of the circle.

Description of Goods: *In connection with the manufacturing of clothing including aprons, hats, tee-shirts, men and womens clothing childrens clothings and as a logo on any other clothing or personal apparel.*

WITNESS *my hand and the seal of the State of New York In the City of Albany on this:*

Wednesday, March 31, 2010

by:



R31639

Special Deputy Secretary of State

New York State Department of State Certificate of Trademark Assignment Registration

I Daniel E. Shapiro, Special Deputy Secretary of State, do certify that the Trademark described below and depicted on the attached copy has been duly registered in this Department pursuant to Article 24 of the General Business Law. This registration will remain in force for TEN years from the Date of Registration.

Original Registration No.: R25572 *Original Registration Date:* 06/06/89

Applicant's Name: MARGARET L. WENDT FOUNDATION HOLDINGS, INC.
40 FOUNTAIN PLAZA, SUITE 277
BUFFALO NY 14202

*State of Incorporation
or Organization:* NEW YORK

Classification Numbers: 14

Date First Used in NYS: 4/1989 *Date First Used Anywhere:* 5/1989

Trademark Description:

"ROYCROFT" The proper name Roycroft will be applied to all items produced in either all block letters or a capital "R" followed by small letters this will be indelibly marked unto each item of manufacture. Examples . . . ROYCROFT Or Roycroft.

Description of Goods: Jewelry and precious-metalware

WITNESS my hand and the seal of the State of New York In the City of Albany on this:

Thursday, April 01, 2010

by:



Special Deputy Secretary of State

R37644

EXHIBIT E



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FROM FARM TO FAMILY

Word Mark ROYCROFT TEA CO. FROM FARM TO FAMILY

Goods and Services IC 035. US 100 101 102. G & S: Mail order services featuring tea, tea beverages, herbal infusions, tisanes, yerba mate, dried fruits, herbs, essential oils, herbal supplements, tea accessories and incense; Retail store and on-line retail store services featuring tea, tea beverages, herbal infusions, tisanes, yerba mate, dried fruits, herbs, essential oils, herbal supplements, tea accessories and incense

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 05.03.08 - More than one leaf, including scattered leaves, bunches of leaves not attached to branches
26.11.07 - Rectangles with a decorative border, including scalloped, ruffled and zig-zag edges
26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or letters; Underlined words or letters

Serial Number 77921410

Filing Date January 27, 2010

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition June 15, 2010

Owner (APPLICANT) The Roycroft Tea Co., Inc. CORPORATION NEW YORK 243 South Grove St. East Aurora NEW YORK 14052

Attorney of Record Anne F. Downey

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TEA CO." APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a rectangular border surrounding the words "ROYCROFT TEA CO.", the word "ROYCROFT" being in the top line above the words "TEA CO.", the word "CO." being in smaller letters, and above "CO." there being a design of two tea leaves; below the rectangular border are the words "FROM FARM TO FAMILY".

Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead
Indicator LIVE

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EXHIBIT F

HISCOCK & BARCLAY

ONE PARK PLACE
300 SOUTH STATE STREET
SYRACUSE, NEW YORK 13202
T 315.425.2700 • F 315.425.2701

GABRIEL M. NUGENT
PARTNER

DIRECT DIAL 315.425.2836
DIRECT FAX 315.703.7361
GNUGENT@HBLAW.COM

April 15, 2010

**VIA FACSIMILE (716) 941-6832
AND OVERNIGHT MAIL**

Anne F. Downey, Esq.
Downey & Downey
8999 Rockwood Road
Boston, New York 14025

Re: Unauthorized Use of the ROYCROFT Mark

Dear Ms. Downey:

We represent the Margaret L. Wendt Foundation and Margaret L. Wendt Foundation Holdings, Inc. (collectively, the "Wendt Foundation") in intellectual property matters. The Wendt Foundation is the owner of rights and interests in the trademark and trade name ROYCROFT. The Wendt Foundation, among other things, owns and operates the historic Roycroft Inn, which provides restaurant services, lodging, and promotes and markets a number of related products. As you may be aware, the Wendt Foundation recently concluded litigation to confirm its ownership of the ROYCROFT mark.

It recently came to our attention that you filed a federal trademark application (Serial No. 77921410) on behalf of your client, The Roycroft Tea Co., Inc. It is our further understanding that your client seeks to open and operate an establishment named "Roycroft Tea Co." in East Aurora, New York in order to sell various food-related and other products. We also understand that your client operates a website associated with this establishment and with at least the following domain names: (1) www.roycrofttea.com; and (2) www.roycrofttea.net. Our client has confirmed that it has not authorized your client to use the ROYCROFT mark for any purpose, whether with respect to the proposed establishment, its corporate name, the associated website, or otherwise.

Your client's uses of the ROYCROFT mark will confuse consumers by leading them to believe that your client is affiliated with our client (*i.e.*, confusing and misleading the public as to the true source of the products and services). In view of these acts, we must insist that your client immediately change its corporate name to another name not confusingly similar to the ROYCROFT mark and stop all other uses of the ROYCROFT mark in association with its products and services, including all advertising and promotion and any other uses that will cause confusion and have not been authorized by our client. Further, we will require that your client either immediately withdraw its trademark application and cancel its domain name registrations, or, at the Wendt Foundation's request, assign them to the Wendt Foundation at no cost to the

SYLIB01\7573593

Anne F. Downey, Esq.
April 15, 2010
Page 2

Wendt Foundation. Lastly, we will require that your client immediately destroy all advertising and/or promotional materials using and/or referring to the ROYCROFT mark.

Our client is interested in an amicable resolution of this matter, and for that purpose we will be pleased to comment on any new corporate name and mark that your client may wish to adopt, but only for the purpose of assuring that they will not be confusingly similar to any of our client's marks or names. We look forward to your prompt reply.

As we do not know whether or not you are representing The Roycroft Tea Co. in any capacity other than its trademark registration application, for example with respect to its application to the village of East Aurora for a permit, we are taking the liberty of copying The Roycroft Tea Co., Inc. in view of the urgency of the matter.

Very truly yours,


Gabriel M. Nugent

GMN:caf

cc: The Roycroft Tea Co., Inc.
243 South Grove Street
East Aurora, New York 14052
Via Overnight Mail

Margaret L. Wendt Foundation
Via Regular Mail

EXHIBIT G

Downey & Downey
ATTORNEYS AT LAW
8999 Rockwood Road
Boston, New York 14025 USA
Direct Dial 716-941-5423
Fax 716-941-6382
Email adowney@DowneysLaw.com
Website www.DowneysLaw.com

ANNE F. DOWNEY
BRIAN W. DOWNEY

April 16, 2010

VIA E-MAIL AND FAX

Gabriel M. Nugent, Esq.
Hiscock & Barclay
One Park Place
300 South State Street
Syracuse NY 13202
Fax 315-703-7361
gnugent@hblaw.com

Re: The Roycroft Tea Co., Inc.

Dear Mr. Nugent:

We are in receipt of your letter dated April 15, 2010.

Congratulations on reaching a settlement in the long-running litigation with Roycroft Holdings, Inc. and related parties. You asserted that the litigation confirms that your client, the Wendt Foundation, owns the ROYCROFT mark. However, the litigation was resolved via a settlement, rather than a judicial decision on the merits. Thus, there is no confirmation of ownership, but rather a resolution reached between the parties for whatever reasons motivated them to settle.

We strongly disagree with the assertions and demands set forth in your letter. Many persons and entities have used and continue to use the ROYCROFT name for a variety of goods and services. A Google search on ROYCROFT will reveal a sample of the many commercial uses of this name by many different businesses. We understand why the Wendt Foundation has staked out a certain position in the litigation and in your letter but, as I discussed with a Wendt Foundation attorney years ago, there are serious questions about the extent to which the Foundation can claim exclusive rights. And I think that if you some day push the issue all the way to a judicial decision, you may be very disappointed with the results.

April 16, 2010

Page 2

We can't help wondering why your letter references our client's village permit application, as this is the first time in my many years as a trademark attorney that I have seen such a reference in a cease and desist letter. We strongly caution you, your firm and your client to refrain from any tortious activity that would harm our client's business.

We have questions about the propriety of your having contacted our client directly. Please send all further communications to this firm and make no further direct contact with our client.

I thank you for your indication that your client is willing to discuss an amicable resolution. I would be happy to discuss with my client measures such as the parties' mutual agreement to operate under their very different logo designs. Perhaps the parties could even discuss opportunities to cross-market each party's distinctive goods/services.

Our client sends this letter without waiving any rights or remedies, all of which are expressly reserved.

Very truly yours,

Downey & Downey

By: 
Anne F. Downey

AFD

EXHIBIT H

Owner: Lawsuit Won't Interfere With Tea Room Opening

Tuesday, 27 April 2010

by Heidi Kyser

Michael and Maryna Caputo are gearing up for legal action against them by the Margaret L. Wendt Foundation, but they don't expect it to interfere with their scheduled June opening of the Roycroft Tea Company in East Aurora, N.Y.

"We expect to be sued in federal court, a trademark lawsuit," Michael Caputo told WTN – moments later adding, "We're opening at the end of June."

News of the dispute with the Wendt Foundation broke last weekend in the the Buffalo News. Caputo confirmed the facts of the story: that the Wendt Foundation objects to the Caputos' use of the name "Roycroft" for its tea business. The Wendt Foundation owns and operates the historic Roycroft Inn, located across the street from the building in which the Caputos plan to open their tea room. Both buildings are located on the Roycroft campus, a district that originally was home to an arts and crafts commune in the late 19th Century.

Caputo said the district is ideal for a tea house that offers high-end, loose-leaf specialty tea, because it has become a destination for people who are interested in arts and crafts. "Our research shows that people in this demographic can afford to be and often are discerning tea drinkers. We have lots of room to grow, because there's no tea room in the area, and no tea being served within 20 miles," he said.

To accommodate this market, he added, "We're backing away from the tea bag and trying to reintroduce craftsmanship into the beverage market here in East Aurora."

Maryna Caputo, Ukrainian by birth, grew up drinking tea and has cultivated her interest in the beverage throughout her life, her husband said. The interest led the couple to visit tea farms in India, and Maryna to complete the Specialty Tea Institute's Level 1 and 2 certification this year.

The Caputos plan to sell a private label line of 24 organic, free trade Chinese, Indian and Sri Lankan teas online, and to offer them wholesale to local restaurants. They also plan to open four tea houses, beginning with the headquarters in East Aurora and following with locations in Ashville, N.C., Gatlinburg, Tenn., and Pasadena, Calif. – other cities with vibrant arts and crafts communities.

In addition to the core line of 24 private label teas, the tea rooms will serve specialty hand-crafted drinks, such as blooming teas, yerba mate and a Chai blended in-house. Although the tea rooms will offer pastries, sandwiches and other light fare, there will be no table service.

In a letter dated March 8 to the board of trustees of the Village of East Aurora, the Caputos outlined their plans for Roycroft Tea. To it, they attached a letter of confirmation from their trademark attorney, who they said had applied for a trademark of their company name, logo and tag line.

Michael Caputo seemed confident the legal process would result in a favorable ruling for Roycroft Tea: "I've been involved in patent and trademark litigation in the past. I was a plaintiff in MercExchange v. Ebay, which lasted 77 months, so I'm quite familiar with that type of litigation. We've done our homework. You can't buy history. It's been proven over and over again."

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